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G8 Principles: Identifying the Anonymous

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G8 PRINCIPLES: IDENTIFYING THE ANONYMOUS

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Over two million companies and thousands of banks call offshore tax havens home.[1] It is unknown exactly how much money is hidden, but estimates range as high as twenty trillion dollars.[2] Over the past few years, the international community, and especially the United States, has focused on the battle to expose these offshore bank accounts.[3] Much progress has been made, as evidenced by the fact that the once highly secretive Swiss banking system has officially issued an "unusually direct apology for their role in helping tax cheats, following a landmark settlement with U.S. authorities."[4] Bank secrecy attracts headlines due to high profile cases involving millionaires and billionaires caught hiding their fortunes.[5] However, another vehicle that allows tax evasion, money laundering, and other financial crimes, which has not properly been addressed by the international community until recently,[6] is the use of shell corporations and other corporate vehicles to hide the true owners of assets. "In the past, people hid their involvement with funds through anonymous bank accounts or accounts in fictitious names;"[7] but now that this option has been limited due to increased pressure on jurisdictions

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[1] *The Missing $20 Trillion*, THE ECONOMIST, Feb. 16, 2013, *available at* http://www.economist.com/news/leaders/21571873-how-stop-companies-and-people-dodging-tax-delaware-well-grand-cayman-missing-20.

[2] *See id.*

[3] For discussion, *see* Itai Greenberg, *The Battle over Taxing Offshore Accounts*, 60 UCLA L. REV. 304 (2012).

[4] *Swiss Banks Apologize for Assisting Tax Cheats*, REUTERS, Sep. 3, 2013 7:18 am, http://www.reuters.com/article/2013/09/03/us-usa-tax-switzerland-idUSBRE97S14B20130903. For more discussion on Swiss sovereignty and international banking, *see* Helga Turku, *The International System of States' Checks and Balances on State Sovereignty: The Case of Switzerland*, 38 N.C.J. INT'L L. & COM. REG. 809 (2013).

[5] For example, Ty Warner, the creator of Beanie Babies and the 209th richest American, with an estimated net worth of 2.9 billion, recently admitted to committing tax evasion. He agreed to pay a $53 million dollar fine as a result of being caught "hid[ing] more than $3m (£1.9m) of income in a secret Swiss bank account." *See Beanie Babies creator Ty Warner to admit tax evasion*, BBC NEWS, Sep. 18, 2013, http://www.bbc.co.uk/news/business-24155274.

[6] *See* G8 Summit, Lough Erne, Northern Ireland, United Kingdom, June 17-18, 2013, *G8 Action Plan Principles to Prevent the Misuse of Companies and Legal Arrangements*, *available at* https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements [hereinafter *G8 Principles*].

[7] EMILE VAN DER DOES DE WILLEBOIS, EMILY M. HALTER, ROBERT A. HARRISON, JI WON PARK, & J.C. SHARMAN, THE PUPPET MASTERS 29 (2010), *available at* http://issuu.com/world.bank.publications/docs/9780821388945 [hereinafter PUPPET MASTERS].

with secretive banking practices to turn over records,[8] the new preferred method for those seeking anonymity is to use a corporate vehicle.[9]

The anonymity that corporate vehicles provide is often abused by those seeking nefarious ends. For example, Viktor Bout was placed on Interpol's wanted list for charges of money laundering in 2002.[10] The United States government also suspected Bout of being the major source of arms in African conflicts, such as Sierra Leon, and as an arms supplier for the Taliban and al Qaeda in Afghanistan.[11] Even though Bout was a well-known arms merchant and embargo buster,[12] he was able to carry on his business until he was arrested in Bangkok, Thailand in 2008.[13] One way that Bout was able to stay ahead of law enforcement was by using corporate vehicles registered in jurisdictions around the world to constantly move assets.[14] The question remains, how was this arms dealer and member of Interpol's wanted list able to register corporate vehicles and use them for illicit purposes?

One problem with anonymous corporate vehicles is that people and organizations can use them for nefarious purposes without leaving a paper trail.[15] While many of these cases involve corruption, it is difficult for authorities to catch those responsible because of the difficulty tracking down the owners of corporate vehicles in some jurisdictions.[16] Because governments have trouble dealing with this issue, third parties have resorted to more unconventional measures.[17] One of the most successful attempts to reveal the anonymous ownership of corporate vehicles was carried out by the International Consortium of Investigative Reporters, when it revealed two million documents that exposed the ownership of "thousands of companies and trusts set up in the British

[8] *See, e.g.*, Turku, *supra* note 4, at 268-71 (discussing the domestic and international forces that have changed Swiss banking laws).

[9] A corporate vehicle "is mainly used to refer to companies (or corporations), foundations and trusts, and national variations of these." *See* PUPPET MASTERS, *supra* note 7, at 29.

[10] *See* Kathi Austin, *Illicit Arms Brokers: Aiding and Abetting Atrocities*, 9 BROWN J. WORLD AFF. 203 (2002).

[11] *See* DOUGLAS FARAH, MERCHANT OF DEATH: MONEY, GUNS, PLANES, AND THE MAN WHO MAKES WAR POSSIBLE 5 (2008).

[12] *See* Austin, *supra* note 10, at 203.

[13] *See* Jonathan Stempel, *Russian Arms Dealer Viktor Bout's U.S. Conviction Upheld*, REUTERS, Sept. 27, 2013, http://www.reuters.com/article/2013/09/27/us-usa-crime-bout-idUSBRE98Q0PG20130927.

[14] *See* FARAH, *supra* note 11, at 9 (stating that Bout registered shell companies in such places as Texas, Florida, and Delaware).

[15] Cyrus R. Vance, Jr., *It's Time to Eliminate Anonymous Shell Companies*, REUTERS, Oct. 9, 2012, http://blogs.reuters.com/great-debate/2012/10/09/its-time-to-eliminate-anonymous-shell-companies/.

[16] For example, in 2002, the Kenyan government chose to pay 31.39 million Euros to a holding company incorporated in the United Kingdom called Anglo-Leasing to set up a new passport printing system, instead of choosing a 6 million Euros bid from a French company. Anglo-Leasing subcontracted the work out to the French company. When "whistle-blowers suggested that corrupt senior politicians planned to pocket the excess fund from the deal . . . [a]ttempts to investigate these allegations were frustrated [] when it proved impossible to find out who controlled Anglo-Leasing." *See* PUPPET MASTERS, *supra* note 7, at 1.

[17] Some countries have resorted to purchasing information on beneficiaries that is stolen by bank insiders. *See* Greenberg, *supra* note 3, at 315.

Virgin Islands and Cook Islands."[18] Times appear to be changing, however, and governments seem willing to properly address the problems created by anonymous corporate vehicles.[19] After the June 2013 summit in Lough Erne, Northern Ireland, the G8[20] announced action plan principles to prevent the misuse of companies and legal arrangements (hereinafter "G8 Principles"). These Principles aim to establish new international norms that will help combat the abuse of anonymous corporate vehicles.[21]

This note will argue that the G8 Principles' increased reporting and recording requirements of the identities of corporate beneficiaries, and the G8's support of an automatic exchange of information between tax authorities, are major steps in policing tax avoidance, money laundering, and other financial crimes involving anonymous corporate vehicles. This note is organized in three parts. Part I will delve deeper into the problems related to tracking the anonymous beneficiaries of corporate vehicles. It will also examine the steps that the international community has already taken in an attempt to combat this issue. Part II will breakdown the G8 Principles outlined in the action plan. Finally, Part III will discuss how the G8's Principles will likely affect criminal uses of anonymous corporate vehicles.

I. TRACKING ANONYMOUS BENEFICIARIES

A. Defining a Beneficiary

Beneficial ownership of an asset first originated as a legal concept in the United Kingdom.[22] A beneficiary is a person who "ultimately controls an asset and can benefit from it."[23] The Financial Action Task Force (FATF) has defined beneficial ownership as follows: a "[b]eneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."[24]

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[18] *Id. See Leaky Devils*, THE ECONOMIST, Apr. 13, 2013, *available at* http://www.economist.com/news/finance-and-economics/21576146-tax-havens-start-reassess-their-business-models-leaky-devils. The list of owners included a range of people "from Asian politicians to Canadian lawyers—and no fewer than 4,000 Americans." *Id.*

[19] For discussion on some recent actions from governments *see infra* part I section C.

[20] The G8 includes: Canada, France, Germany, Italy, Japan, Russia, United States of America, and the United Kingdom. *See UK Presidency of G8 2013*, GOV.UK, *https://www.gov.uk/government/topical-events/g8-2013* (last visited Oct. 9, 2013).

[21] *See G8 Principles*, *supra* note 6.

[22] For a brief discussion on the origins of beneficiaries in trust law, *see* PUPPET MASTERS, *supra* note 7, at 18.

[23] *Id*.

[24] Financial Action Task Force on Money Laundering, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations 110 (2012), *available at* http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf [hereinafter FATF Recommendations].

There are two key concepts espoused by the FATF definition that make it especially applicable to the fight against anonymous corporate vehicles. First, it refers to the fact that "a beneficial owner is always a natural person."[25] This point acknowledges that there is always a person or group of people who stand to benefit from a corporate vehicle. Consequently, these people need to be identified in order to effectively fight their nefarious purposes.[26] Second, beneficial ownership encompasses "control over a legal person or arrangement," which extends the definition of a beneficiary to those who control corporate vehicles such as shell corporations.[27]

B. Where Are Beneficiaries Hiding?

In order to understand the scope of this issue, it is necessary to discuss where beneficiaries hide. Some of the most utilized corporate vehicles are trusts,[28] foundations,[29] and corporations.[30] This note will focus on the corporate vehicle known as a shell company, which is "the most common means for laundering money, giving and receiving bribes, busting sanctions, evading taxes, and financing terrorism."[31]

In 2011, the World Bank conducted a study of 213 large-scale corruption cases and determined that over 70% of them relied on shell companies.[32] The FATF defines a shell company as one that has "no significant assets or operations."[33] Shell companies typically do not have a physical presence (outside of a mailing address), hire employees, or produce independent economic value.[34] It is not uncommon to find hundreds, if not thousands, of shell companies registered to the same address, because most shell companies do not have operations.[35] A shell company's ownership can be structured in a variety of forms, including

[25] PUPPET MASTERS, *supra* note 7, at 19.
[26] *See id.*
[27] *See id.* at 21.
[28] For discussion on the use of trusts, *see* PUPPET MASTERS, *supra* note 7, at 44–47.
[29] For discussion on the use of foundations, *see id.* at 47–48.
[30] *See id.* at 51.
[31] MICHAEL FINDLEY, DAVID NIELSON, & JASON SHARMAN, GLOBAL SHELL GAMES: TESTING MONEY LAUNDERERS' AND TERRORIST FINANCIERS' ACCESS TO SHELL COMPANIES 2 (2012) [hereinafter SHELL GAMES]; *see also* DEPARTMENT OF TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES 2 (2006) (finding, for example, that domestic shell companies in the United States allow for billions of dollars' worth of international wire transfers to be conducted by unknown beneficiaries). It should be noted that not all shell companies are set up for illicit purposes; legitimate purposes include business finance, mergers and acquisitions, or estate and tax planning. *See* FINANCIAL ACTION TASK FORCE, THE MISUSE OF CORPORATE VEHICLES, INCLUDING TRUST AND COMPANY SERVICE PROVIDERS 1 (2006) [hereinafter FINANCIAL ACTION TASK FORCE].
[32] GLOBAL WITNESS, ANONYMOUS COMPANIES 2 (2013), *available at* http://www.globalwitness.org/library/anonymous-companies-global-witness-briefing.
[33] FINANCIAL ACTION TASK FORCE, *supra* note 31, at 24.
[34] *See* DEPARTMENT OF TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES 4 (2006), *available at* http://www.fincen.gov/LLCAssessment_FINAL.pdf.
[35] For example, one building in the Grand Caymans known as Ugland House is officially the registered home of 18,000 companies. *See The Missing $20 trillion, supra* note 1.

having shares "issued to a natural or legal person or in registered or bearer form." [36] Bearer shares provide for an additional amount of anonymity because they allow for anonymous transfers of ownership.[37] This is because whoever is in physical possession of the shares is the owner of the company.[38]

Setting up a shell company has become easier in modern times because "[s]hell companies can be set up online in dozens of countries in days or even hours for as little as a few hundred dollars."[39] There are a multitude of corporate service providers available over the Internet that will take care of all the necessary paperwork.[40] For a fee, corporate service providers offer nominee service, a certificate of incorporation, a corporate seal, minutes of board meetings, a registry of directors, and a variety of other corporate documents.[41]

In many instances, little information must be provided to legally set up a company. For example, in the United States,

> [a] person who wants to set up a U.S. company typically provides less information than is required to open a bank account or get a driver's license. In most cases, they do not have to provide the name, address or proof of identification of a single owner of the new company.[42]

Furthermore, even in jurisdictions where there are requirements to obtain information about the beneficiaries of corporate vehicles, the rules are

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[36] FINANCIAL ACTION TASK FORCE, *supra* note 31, at 1.

[37] *See* PUPPET MASTERS, *supra* note 7, at 41.

[38] *See id.* Bearer shares have recently been restricted in many jurisdictions. For example, in August 2013 the government of Panama enacted a new law that immobilizes bearer shares, which means that the owner of the shares must appoint a guard, who can identify the beneficiary of the shares, to hold the shares in Panama. *See Panama's government approves bearer shares immobilization law*, SOCIETY OF TRUST AND ESTATE PRACTITIONERS, Aug. 27, 2013, http://www.step.org/panama%E2%80%99s-government-approves-bearer-shares-immobilization-law.

[39] SHELL GAMES, *supra* note 31, at 6. For example, "[m]ost U.S. States offer electronic services that incorporate a new company and many will set up a new company in less than twenty-four hours. The median fee is less than $100. In Delaware and Nevada, for an extra $1,000, an applicant can set up a company in less than an hour. Colorado, which incorporates about 5,000 companies each month, told the Subcommittee that it now sets up ninety-nine percent of its companies by computer without any human intervention or review of the information provided." *Failure to Identify Company Owners Impedes Law Enforcement*: *S. Hrg. 109-845 Before Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. and Governmental Affairs*, 109th Cong. 4 (2007) (opening statement of Senator Levin) [hereinafter Subcommittee Hearing].

[40] *See, e.g.*, *List of International Corporate Service Providers*, SEYCHELLES INTERNATIONAL BUSINESS AUTHORITY, http://www.siba.net/index.php?s=links-icsp (last visited Oct. 10, 2013) (listing sixty-five corporate service providers that will set up a company in the Seychelles); *ACSP Members*, ASSOCIATION OF CORPORATE SERVICE PROVIDERS, http://www.acsp.co.im/memberdb.php (last visited Oct. 10, 2013) (listing 96 corporate service providers that will set up a company in the Isle of Mann).

[41] *See* Max Heywood, *How to Set up an Offshore Company in Ten Minutes,* Space for Transparency, (Apr. 9, 2013), http://blog.transparency.org/2013/04/09/how-to-set-up-an-offshore-company-in-10-minutes/.

[42] Subcommittee Hearing, *supra* note 39, at 4.

often not followed.[43]

Shelf companies are a subcategory of shell companies. Shelf companies are aptly named because they are shell companies that have been "aged" to add to their credibility. They are available for purchase off of a figurative "shelf" from a corporate service provider.[44] Once a shelf company is purchased, the buyer may acquire the company's credit and tax history, which further increases its credibility.[45] This lack of accurate and recorded information about shell companies means "[s]hell companies [] cannot be linked back to the real individuals in control."[46] This "create[s] near-insuperable obstacles for regulators and law enforcement officials,"[47] and frustrates international efforts to increase transparency because there simply is no information to disclose to other countries when they request it.[48]

C. Existing International Regulations Attempting to Track Beneficiaries

"Most governments of major developed countries agree that access to information from other countries is vital to the full and fair enforcement of their tax laws."[49] As a result, individual states and the international community as a whole have attempted to stop the abuse of corporate vehicles by creating laws and agreements that are designed to help identify anonymous corporate beneficiaries. This section will explore the following three recent developments that have attempted to identify anonymous beneficiaries: (1) the Organization for Economic Co-operation and Development's (OECD) Model Tax Convention on Income and on Capital; (2) the FATF Recommendations; and (3) the United States' Foreign Account Tax Compliance Act (FATCA).

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[43] In 2012 the Centre for Governance and Public Policy at Griffith University published the results of a study that was conducted to test "whether international rules are actually effective when they mandate those selling shell companies must collect identifying documents from their customers." To gather evidence, the study sent out "more than 7,200 email solicitations to more than 3,700 Corporate Service Providers that make and sell shell companies in 182 countries." It found that "nearly forty-eight percent of all replies received did not ask for proper identifications, and twenty-two percent did not ask for any identity documents at all." SHELL GAMES, *supra* note 31, at summary.

[44] *See* Subcommittee Hearing, *supra* note 39, at 5; *see also Shelf List*, Nevada First Holdings, http://www.nevadafirst.com/shelfreport.asp (last visited Oct. 9, 2013) (containing a list of 51 registered shell companies some of which already have bank accounts); *see also Shell List*, Panama Offshore Center, http://www.panamaoffshorecenter.com/?cnt=14 (last visited Oct. 9, 2013) (containing a an available shell company in Panama that was incorporated in 1985).

[45] PUPPET MASTERS, *supra* note 7, at 37.

[46] SHELL GAMES, *supra* note 31, at 6.

[47] *Id.*; *see, e.g.*, Subcommittee Hearing, *supra* note 39, at 6 ("Immigrations and Customs Enforcement officials reported that a Nevada-based corporation received more than 3,700 suspicious wire transfers totaling $81 million over two years but the case was not pursued because the Agency was unable to identify the corporation's owners.").

[48] Subcommittee Hearing, *supra* note 39, at 7.

[49] Greenberg, *supra* note 3, at 313.

1. OECD Model Tax Convention

The OECD Model Tax Convention on Income and on Capital (OECD Model Treaty) is the "world's dominant model tax treaty."[50] While some commentators believe that the OECD Model Treaty actually enables shell companies;[51] the treaty does provide for a mechanism that is designed to allow states to identify and track beneficiaries. Articles 1 and 3 of the OECD Model Treaty identify the individuals that are covered by the treaty. Article 1 states that the treaty applies "to persons who are residents of one or both of the contracting states."[52] The definition of person is clarified in Article 3 to include a company, and a company is defined as "any body corporate or any entity that is treated as body corporate for tax purposes."[53] Therefore, this treaty would apply to many of the corporate vehicles that are used by anonymous beneficiaries.

Article 26 (updated in 2012) is the key article that was designed to aid authorities in pursuing claims against anonymous beneficiaries. Article 26 covers the rules regarding the exchange of information that is "foreseeably relevant" to the requesting state's domestic tax laws.[54] The standard of "foreseeably relevant" is intended to require the exchange of a wide range of information.[55] The OECD Model Treaty does not designate when states should exchange information, instead leaving it to the treaty partners to decide.[56] Between states where there is a mutual agreement to exchange information, the article "requires information exchange only upon request, while permitting but not requiring automatic information exchange."[57]

In addition, Article 26 allows situations where states will not be forced to provide information. Three important situations include the following: First, states will not be forced to provide information when the state would be required "to carry out administrative measures at variance with the laws and administrative practice of that . . . State." Second, relief is provided in situations where the state would be required "to supply information which is not obtainable under the laws or in the normal course of the administration of that . . . State." Third, information does not need to be disclosed when disclosure of that information would

[50] *Id.* at 314.

[51] *See, e.g., Lee Sheppard: Don't Sign OECD Model Tax Treaties!*, TAX JUSTICE NETWORK, (May 31, 2013), http://taxjustice.blogspot.com/2013/05/lee-sheppard-dont-sign-oecd-model-tax.html.

[52] OECD, Model Tax on Income and Capital 2010 *(updated 2010)* M-6, OECD Publishing, Date of signing, http://dx.doi.org/10.1787/978926417517-en.

[53] *Id.* at M-9.

[54] OECD, UPDATE TO ARTICLE 26 OF THE OECD MODEL TAX CONVENTION AND ITS COMMENTARY 1 [hereinafter OECD, UPDATE 2012], *available at* http://www.oecd.org/ctp/exchangeofinformation/latestdocuments/120718_Article 26-ENG no cover (2).pdf.

[55] OLIVER R. HOOR, THE OECD TAX CONVENTION: A COMPREHENSIVE TECHNICAL ANALYSIS 233 (2010).

[56] ANGHARAD MILLER & LYNNE OATS, PRINCIPLES OF INTERNATIONAL TAXATION 7.44 (3d ed. 2012), *available at* http://uk.practicallaw.com/books/9781847668790/chapter07#null.

[57] Greenberg, *supra* note 3, at 314.

be "contrary to public policy."[58] These exceptions can be important when it comes to tracking beneficiaries, especially when recording the identity of a beneficiary is not "in the normal course of administration of that . . . State."[59] It is often the case that, even after a successful request has been made, there is no information on file to share with a requesting party and no obligation for the requestee to gather that information for the requestor.[60]

Furthermore, OECD standards do not permit requesting states to search for potential abuses by its citizens through "fishing expeditions."[61] Originally, the restriction on "fishing expeditions" was understood to limit requests to those "about specific taxpayers, identified by name."[62] However, the commentary to the 2012 update to Article 26 expanded the definition "fishing expeditions."[63] According to the commentary:

> A request for information relating to a group of unidentified taxpayers will be viewed as a 'fishing expedition'-that is, speculative and lacking nexus-unless the requesting state can provide the following to the requested state: (1) a detailed description of the group, (2) the specific facts and circumstances underlying the request, (3) an explanation of the applicable law, and (4) 'why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis.' Furthermore, the requesting state must show that the requested information 'would assist' in determining whether the taxpayers in the group complied with the tax law.[64]

While the requesting state still must supply a large amount of information about the beneficiary in order to make a request, the update to Article 26 has given the requesting state more power to track and identify beneficiaries. Even after the revision to Article 26, some scholars believe that information exchanged upon request is an inadequate measure when it comes to identifying anonymous beneficiaries because it requires that the requesting state already have detailed and specific information about the beneficiary.[65]

[58] OECD, UPDATE 2012, *supra* note 54, at 1.
[59] *Id.*
[60] Subcommittee Hearing, *supra* note 39, at 7.
[61] Greenberg, *supra* note 3, at 314.
[62] *Id.*
[63] OECD, UPDATE 2012, *supra* note 54, at 3.
[64] Greenberg, *supra* note 3, at 314 n. 26 (citing the commentary to the OECD, UPDATE 2012, supra note 54, at 3).
[65] Greenberg, *supra* note 3, at 316.

2. FATF Recommendations

The FATF is a policy making body established in 1989 whose objective is "to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system."[66] The FATF has released a set of recommendations, most recently in 2012, which have been recognized as the international standard for combating money laundering and terrorist financing.[67] It is important to note that "[l]ike the products of other transgovernmental networks, the recommendations do not create legal obligations."[68] Instead, it is better to view the recommendations "as soft law or pledges by member states."[69]

Recommendation 10 addresses the problem of anonymous beneficiaries, recommending that financial institutions conduct Customer Due Diligence (CDD).[70] The recommendation impacts the setup of corporate vehicles, because it requires financial institutions to conduct CDD "when establishing business relations."[71] CDD mandates that financial institutions identify the customer and verify that the customers are using reliable, independent source documents.[72] Further, CDD requires that institutions take reasonable measures to identify the beneficial owner.[73]

Recommendation 11 also addresses problems related to anonymous beneficiaries because it requires financial institutions to maintain at least five years' worth of records related to CDD measures.[74] The records would include passports, identity cards, driver's licenses, and other identifying documents.[75] The recommendation requires that these records be available to authorities upon request.[76]

While Recommendations 10 and 11 would have beneficial implications on the fight against anonymous beneficiaries, their success is limited by the fact that the FATF's "monitoring mechanisms cannot be applied to nonmember states."[77] As a result, the FATF's monitoring mechanisms are limited to the thirty-four member states.[78] Furthermore, even if the state is a member, it does not mean that they have fully

[66] *Who We Are*, FATF (2014), http://www.fatf-gafi.org/pages/aboutus/.
[67] *Id.*
[68] Kenneth S. Blazejewski, *The FATF and Its Institutional Partners: Improving the Effectiveness and Accountability of Transgovernmental Networks*, 22 TEMP. INT'L & COMP. L.J. 1 (2008).
[69] *Id.*
[70] FATF Recommendations, *supra* note 24, at 14.
[71] *Id.*
[72] *See id.*
[73] *See id.*
[74] *See id* at 15.
[75] *Id.*
[76] FATF Recommendations, *supra* note 24, at 15.
[77] Blazejewski, *supra* note 68, at 18.
[78] *See FATF Members and Observers*, FATF (2014), http://www.fatf-gafi.org/pages/aboutus/membersandobservers/#d.en.3147.

complied with FATF Recommendations.[79] For example, the United States, a leading member of the FATF, was formally cited for failure to comply with the recommendations in 2006.[80] While the United States substantially complies with the recommendations, the FATF's Mutual Evaluation of the United States found that the United States did not follow the recommendations in regards to beneficial owners.[81] Specifically, the FATF criticized the United States for not having strong identification requirements for beneficial owners, for not applying the recommendations to non-financial businesses, and for having company formation procedures and reporting requirements that do not provide adequate, accurate, or timely information on the beneficial ownership of legal persons.[82] In conclusion, while the FATF Recommendations do present solutions to many of the problems related to corporate vehicles, they fall short on remedying those problems.

3. Foreign Account Tax Compliance Act

In 2010, the Foreign Account Tax Compliance Act (FATCA) became law in the United States.[83] Beginning in 2014, FATCA required that U.S. persons and foreign entities with significant U.S. ownership report information about their foreign financial accounts directly to the IRS.[84] "The rules are intended to provide reporting both on accounts held directly by individuals and on interests in accounts held by shell entities for the benefit of U.S. persons."[85] FATCA intends to punish financial institutions that do not comply by placing a withholding tax on payments from U.S. sources and income earned on U.S. investments by those financial institutions.[86]

The goal of FATCA is to force all foreign financial institutions, including those that do not do business in the United States, to comply with the law of the United States.[87] It seeks to achieve this goal by way of the pass-through provision in section 1471.[88] Section 1471 requires complying foreign financial institutions to withhold payments to non-complying foreign financial institutions in order to be fully compliant with FATCA.[89]

[79] FATF Recommendations do not create legal obligations that must be followed by member states. *See* Blazejewski, *supra* note 68, at 10.

[80] Subcommittee Hearing, *supra* note 39, at 7.

[81] *Mutual Evaluation of the United States*, FATF (2014), http://www.fatf-gafi.org/countries/u-z/unitedstates/documents/mutualevaluationoftheunitedstates.html

[82] *Id.*

[83] *Foreign Account Tax Compliance Act*, INTERNAL REVENUE SERVICE (Dec. 19, 2014), http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA.

[84] Greenberg, *supra* note 3, at 334.

[85] *Id.*

[86] *See id.* at 334–35.

[87] *See id.*at 336.

[88] 26 U.S.C. § 1471(b)(1)(D) (2010).

[89] Greenberg, *supra* note 3, at 335. FATCA "was intended (1) to induce foreign financial institutions that are investing in or through participating financial institutions, but that are not investing in the United States, to also agree to participate in FATCA and (2) to disincline

FATCA also requires financial institutions to report or certify the ownership of all corporate vehicles that are not exempt under the regulations. Otherwise, they face the risk of being punished with a thirty percent withholding tax.[90] This reporting obligation also arises out of section 1471, which requires financial institutions to report the ownership of a United States owned foreign entity.[91] Section 1471 defines such an entity as one having "one or more substantial United States owners."[92] The threshold of being a "substantial United States owner" according to FATCA requires ownership of "more than 10 percent of the stock" in a corporation, rights to "more than 10 percent of the profits interests or capital interests" of a partnership, or indirectly or directly holding "10 percent beneficial interest" in a trust.[93] The act mandates that beneficial owners who seek to avoid the withholding tax submit: "(A) a certification that such beneficial owner does not have any substantial United States owners, or (B) the name, address, and TIN of each substantial United States owner of such beneficial owner."[94] As a result, FATCA not only requires disclosure of U.S. beneficiaries to foreign financial services, but also to the IRS.

Despite the potential power of FATCA to discover the identities of anonymous beneficiaries of corporate vehicles, it does have potential drawbacks and shortcomings. One commentator has argued that "the United States could neither implement broadly applicable [pass-through] payment withholding nor achieve near-comprehensive financial institution participation through unilateral measures alone."[95] The unilateral nature of the law is an issue because the law only benefits the United States, and "places significant burdens on foreign financial services."[96] FATCA would also infringe on the sovereignty of foreign nations, because it could require the foreign financial services to violate contractual relationships, as well as data protection, bank secrecy, or other similar laws.[97] Some have even referred to FATCA as a "new American imperialism."[98] Consequently, the United States has begun entering into bilateral agreements with some foreign nations, in order to avoid state sovereignty issues.[99] Ultimately, because the law did not

participating foreign financial institutions from doing business with nonparticipating financial institutions because business between participating and nonparticipating financial institutions may require withholding under U.S. law." *Id.* at 335–36.

[90] *About FATCA,* DELOITTE (Aug. 1, 2013), *available at* http://www.deloitte.com/view/en_us/us/930c9948e681a210VgnVCM100000ba42f00aRCRD.htm.

[91] 26 U.S.C. § 1471.

[92] *Id.*

[93] 26 U.S.C. § 1473(2)(A) (2010).

[94] 26 U.S.C. § 1472(b)(1) (date of code edition cited).

[95] Greenberg, *supra* note 3, at 336.

[96] *Id.*

[97] *See id.*

[98] Robert W. Wood, *G-8 Nations Take on Tax Evasion, Tax Havens and More,* FORBES (June 19, 2013), http://www.forbes.com/sites/robertwood/2013/06/19/g-8-nations-take-on-tax-evasion-tax-havens-and-more/.

[99] In February 2012, the United States entered into bilateral agreements with France, Germany, Italy, Spain, and the United Kingdom, which calls for an automatic exchange of information pursuant to FATCA. *See* Greenberg, *supra* note 3, at 337.

officially take effect until 2014, it is still too early to tell how successful it will be at identifying U.S. persons who are hiding as anonymous beneficiaries of corporate vehicles.

II. THE G8 PRINCIPLES

The United Kingdom acted as president of the G8 in 2013.[100] Its leader, Prime Minister David Cameron, announced the following goals of the summit: advancing trade, ensuring tax compliance, and promoting transparency.[101] One notable development from the G8 summit was that it decided to support the G20 and the OECD's call for the adoption of a multilateral automatic exchange of information on beneficiaries.[102] The G8 called for the implementation of this new global standard as soon as possible.[103] Prime Minister David Cameron's communiqué from the summit officially addressed the issues regarding the abuse of corporate vehicles.[104] The G8 leaders agreed to "make a concerted and collective effort to tackle [the misuse of shell companies] and improve the transparency of companies and legal arrangements."[105] In addition to reaffirming the G8 member countries' commitment to implement FATF's Recommendations, the leaders agreed to publish national action plans based off of the G8 Principles, which were published on June 18, 2013.[106]

The G8 believes that these principles are "essential to ensure the integrity of beneficial ownership and basic company information [and] the timely access to such information by law enforcement for investigative purposes."[107] There are eight separate principles within the G8 Principles, each of which will be explained below.

The first principle requires companies to "know who owns and controls them and their beneficial ownership."[108] In order to fulfill this requirement, companies would be required to keep records of their ownership. Companies have the burden to make sure that the basic ownership and beneficial ownership information is adequate, accurate, and current.[109]

The second principle addresses the availability of ownership information to relevant authorities.[110] "Countries should consider measures to facilitate access to company beneficial ownership

[100] *See UK Presidency of G8 2013, supra* note 20.
[101] *See id.*
[102] *See 2013 Lough Erne G8 Leaders' Communiqué*, GOV.UK, 6–7 (June 18, 2013), *available at* https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique.
[103] *See id.* at 1.
[104] *See id.*
[105] *See id.* at 7.
[106] *See id.* at 8.
[107] *G8 Principles*, *supra* note 6.
[108] *Id.* at Principle 1.
[109] *Id.*
[110] *See id.* at Principle 2.

information by financial institutions and other regulated businesses."[111] This second principle suggests that states could make companies register beneficial ownership information on central registries at the national or state level.[112]

The third principle addresses the abuse of trusts by anonymous beneficiaries.[113] It requires a trustee of an express trust to know who the beneficial owners of that trust are.[114] In doing so, the trustee would be required to have information on both the beneficiaries and settlors of the trust.[115] This information must be made available to law enforcement and other relevant authorities.[116]

The fourth principle focuses on educating authorities on the weaknesses within their anti-money laundering and terrorism finance prevention methods.[117] In order to carry out this principle, risk assessments should be conducted by each state and the results should be shared both with relevant authorities as well as other states.[118] The goal of this principle is to expose risks and implement effective measures to enhance the respective state's methods.[119]

The fifth principle is designed to combat the use of abusive financial instruments and shareholding structures that successfully provide beneficiaries with anonymity.[120] The principle specifically states that the abuse of mechanisms "such as bearer shares and nominee shareholders and directors, should be prevented."[121]

The sixth principle is designed to place additional burdens on financial institutions as well as trust and company service providers.[122] It suggests that states should place customer identification and verification obligations on those institutions, in order to make sure that beneficiaries are properly vetted.[123] The principle further suggests that states should "ensure effective supervision of these obligations."[124]

The seventh principle addresses enforcement mechanisms that should be employed by states against companies and financial institutions that do not comply with their obligations.[125] This principle advocates the use of "[e]ffective, proportionate and dissuasive sanctions" that are to be "robustly enforced" by the states.[126] This principle would require states to sanction institutions that do not conduct proper CDD

[111] *Id.*
[112] *Id.*
[113] *Id.* at Principle 3.
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *See id.* at Principle 4.
[118] *See id.*
[119] *See id.*
[120] *See id.* at Principle 5.
[121] *Id.*
[122] *See id.* at Principle 6.
[123] *See id.*
[124] *Id.*
[125] *See id.* at Principle 7.
[126] *Id.* at Principle 7.

according to FATF Recommendations.[127]

The eighth principle addresses the need for international cooperation for information exchange between states regarding the abuse of corporate vehicles.[128] This principle proposes that national authorities should be encouraged by states to "rapidly, constructively, and effectively provide basic company and beneficial ownership information upon request from foreign counterparts."[129]

In order to ensure that the G8 members fulfill their commitment to publish national action plans, based on the above principles, and take actions pursuant to those plans, the G8 agreed "to a process of self reporting [sic] through a public update on the progress made against individual action plans and to inform the Financial Action Task Force."[130]

III. THE IMPACT OF THE PRINCIPLES

While the principles were designed knowing "a one-size-fits all approach may not be the most effective"[131] approach, the core of the G8 Principles establishes a standard for the identification of beneficial owners that could have profound impact on the fight against the abuse of corporate vehicles. This section will expound upon the potential impact and limitations that may exist in that regard.

A. Beneficial Ownership Disclosure Requirements

The G8 Principles reinforce and expand upon the FATF Recommendations. For example, both the G8 Principles and the FATF Recommendations aim to promote the disclosure of information regarding the identities of beneficiaries.[132] One key difference is that the FATF Recommendations focus on financial institutions, while the G8 Principles extend the burden to the companies themselves.[133] It appears that the G8 Principles are attempting to kill the weed (abuse of corporate vehicles) as close to the root (the anonymous beneficiaries) as possible. This distinction has vast implications because it makes corporations directly responsible for their information at the risk of being sanctioned.[134] The G8 Principles would require corporations to keep

[127] *Id.* For discussion on CCD procedures, see *infra* Part I, section C, FATF Recommendations.
[128] *See G8 Principles*, *supra* note 6, at Principle 8.
[129] *Id.*
[130] *G8 Principles*, *supra* note 6.
[131] *Id.*
[132] Both Principle 1 of the G8 Principles and Recommendation 10 of the FATF Recommendations share the same goal of requiring disclosure of the identities of beneficiaries. *See G8 Principles*, *supra* note 6, at Principle 1; FATF Recommendations, *supra* note 24, at 14.
[133] This distinction is discovered by comparing the language of the FATF Recommendations and the G8 Principles. The FATF Recommendations reference "financial institutions," while the G8 Principles make references to "companies" specifically. *Compare G8 Principles*, *supra* note 6, at Principle 1, *with* FATF Recommendations, *supra* note 24, at 14.
[134] *See G8 Principles*, *supra* note 6, at Principle 7 (allowing for "robustly enforced" sanctions to be used against non-complying companies).

records of their ownership. While financial institutions and corporate service providers would still be required to gather and verify ownership information,[135] the G8 Principles seek to increase the effectiveness of those measures by focusing on the companies, which supply that information to those institutions. This would, for example, place the burden on companies to know who actually possesses their bearer shares.

A potential drawback to this scheme could arise when corporate vehicles are less than willing to gather and record the necessary information. Furthermore, it is unclear who will be responsible for gathering that information in a shell company. Most shell companies, as the name implies, are nothing but empty shells with no real operations;[136] they do not have employees, executives, or even active directors whose responsibility it would be to gather the necessary information. This situation is analogous to telephoning a closed business and trying to make a request where there is hardly any chance that the message would be received, let alone acted upon. In order to remedy this problem, the sanctions supported by the G8 Principles[137] must be strong enough to force compliance. Sanctions such as freezing the assets of a non-compliant corporate vehicle, while extreme, would certainly get a beneficiary's attention.

B. Role of Central Registries

The second G8 Principle recommends that states should make company information available on central registries.[138] Coupled with the recommendations for companies to turn over "adequate, accurate, and current" information about beneficiaries, this provision could be very successful in identifying anonymous beneficiaries.[139] Currently, most states already have central registries, which record information about companies. However, each one differs as to what types of information are required to set up a company.[140] Central registries will be more effective as a result of raising the standard for what information needs to be turned over and recorded. Another way that central registries can be more effective is the establishment of national registries for all corporate vehicles, including trusts. In jurisdictions like the United States and the United Kingdom, individual states and dependencies are allowed to have

[135] *See id.* at Principle 8.

[136] *See* FINANCIAL ACTION TASK FORCE, *supra* note 31, at 24.

[137] The G8 principles do not provide examples regarding what sort of sanctions they recommend; they leave it up to the member states to create and enforce "[e]ffective, proportionate and dissuasive sanctions." *See G8 Principles*, *supra* note 6, at Principle 7.

[138] *See G8 Principles*, *supra* note 6, at Principle 8.

[139] *Id.* at Principle 7.

[140] For example, in the United States, some states require less information to create a company than to obtain a driver's license. *See* Subcommittee Hearing, *supra* note 39, at 4; *see also* Dean Kalant, *Who's In Charge Here? Requiring More Transparency In Corporate America: Advancements In Beneficial Ownership For Privately Held Companies*, 42 J. MARSHALL L. REV. 1049, 1051 (2009) (stating that in the United States "transparency of ownership requirements vastly differs from state to state").

their own central registries.[141] The advantages of a national registry are twofold. First, a national registry allows for one standard regarding required information pertaining to beneficial owners. Second, a national registry will ultimately increase the accessibility of information to law enforcement, tax authorities, and foreign governments because the information will be stored in one central location.

It is possible to see the potential of an effectively established central registry by looking at the International Consortium of Investigative Journalists (ICIJ) Offshore Leaks Database.[142] The ICIJ recently published the Offshore Leaks Database on June 14, 2013.[143] Readers are allowed to search the database for information about the beneficiaries of more than 100,000 offshore entities in tax havens.[144] This database performs the function that a central registry could perform, but on an international scale. It includes information on shell companies, trusts, and funds that are located in traditionally secretive jurisdictions such as the British Virgin Islands, Cayman Islands, Cook Islands, and Singapore.[145] Unlike an official registry, the Offshore Leaks Database is limited by the information that the ICIJ can uncover. As a result, the database is not always capable of revealing a corporate vehicle's true owners.[146] This is where central registries would have a significant advantage. They would be able to lean on the power of their respective states to increase the disclosure of information about beneficiaries.[147] One problem with central registries is the lack of uniform standards for the specific types of information that they need to obtain. However, members designed the G8 Principles to become a universal standard that outlines the types of information that ought to be required. If the central registries adopt the G8 Principles as the universal standard, they will be well-positioned to supply agencies and governments with information that will aid in the fight against tax evasion, money laundering and terrorist financing. Indeed, these are some of the biggest problems surrounding shell corporations.

C. The Information Exchange Standard

The G8 Principles require that companies track ownership, and disclose that information to domestic authorities, such as central

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[141] *See, e.g.*, *Delaware Division of Corporations*, DELAWARE.GOV, http://corp.delaware.gov/ (last visited Oct. 13, 2013) (United States); *The Department of Economic Development*, ISLE OF MAN GOVERNMENT, http://www.gov.im/ded/companies/companiesregistry.xml (last visited Oct. 13, 2013) (United Kingdom).

[142] The Offshore Leaks Database can be found at http://offshoreleaks.icij.org/search.

[143] *See* Marina Walker Guevara, ICIJ Releases Offshore Leaks Database Revealing Names Behind Secret Companies, Trusts (June 14, 2013), *available at* http://www.icij.org/offshore/icij-releases-offshore-leaks-database-revealing-names-behind-secret-companies-trusts.

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] The potential use of sanctions and other "measures to facilitate access to company beneficial ownership information" by states could be relied upon by central registries. *See G8 Principles*, *supra* note 6, at Principles 2 and 7.

registries. The eighth principle of the G8 Principles is the most important because it addresses getting company ownership information into the hands of foreign jurisdictions that need it for enforcement purposes.[148] Despite the G8 support of an automatic exchange of information, the G8 Principles still only require information to be exchanged "upon request."[149] Furthermore, the G8 principles do not specify the type of information that needs to be presented by the requesting country to make a valid request regarding company ownership. The prevailing international norms for a valid information request stem from the OECD Model Treaty. Thus, it is likely that the countries implementing the G8 principles will follow the OECD Model Treaty's requirements.[150] As discussed in Part I, the OECD Model Treaty would require that the requesting state possess a great deal of information in order to make a valid request; it must be more than just "fishing expeditions."[151]

Fortunately, the leaders of the international community voiced their support for revising the OECD Model Treaty to mandate an automatic exchange of information.[152] As a result, information about the beneficiaries of corporate vehicles such as "shell companies, special purpose companies and trust arrangements," could soon be subject to the automatic exchange.[153] Consequently, information pertaining to corporate beneficiaries would be made available to the states where those beneficiaries are citizens and are subject to domestic taxes. While the G8 Principles place the burden on the OECD to mandate an automatic exchange, its support will greatly increase the likelihood that the automatic exchange mandate becomes a reality.

D. How Influential Will the Agreement Be?

One of the key limitations of the G8 Principles is that only eight states are obligated to abide by them. In spite of this, the G8 Principles remain influential on an international level because of the G8's economic strength.[154] Nevertheless, because it takes time for the international community to build consensus and make changes, the most immediate effects of the G8 Principles will come from within the member states. This is because the G8 will need to look no further than itself to find tax havens that will be affected by the G8 Principles.

[148] *See G8 Principles*, *supra* note 6, at Principle 8.
[149] *Id.*
[150] *See* OECD, UPDATE 2012, *supra* note 54, at 1; *supra* Part I, Section C, OECD Model Tax Convention.
[151] Greenberg, *supra* note 3, at 314.
[152] *See 2013 Lough Erne G8 Leaders' Communiqué*, supra note 102, at 6–7.
[153] *G8 summit Agrees on New Measure to Clamp Money Laundering and Corporate Tax Avoiders*, MercoPress (June 19, 2013), *available at* http://en.mercopress.com/2013/06/19/g8-summit-agrees-on-new-measure-to-clamp-money-laundering-and-corporate-tax-avoiders [hereinafter *G8 Summit Agrees*].
[154] Stephanie Lee, Alexandra Silver, & Zachary Laub, *The Group of Eight (G8) Industrialized Nations*, COUNCIL ON FOREIGN RELATIONS (June 14, 2013), *available at* http://www.cfr.org/global-governance/group-eight-g8-industrialized-nations/p10647 ("The aggregate GDP of the G8 makes up some 50 percent of the global economy.").

1. The United Kingdom

"About one-fifth of offshore tax havens, which are used by multinationals to shelter cash from the tax authorities, are British dependencies."[155] Some of those tax havens include: Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Anguilla, Montserrat, Turks and Caicos, Jersey, Guernsey, and the Isle of Man.[156] The United Kingdom has aggressively addressed its tax haven problem by securing "agreements from all the British Overseas Territories and Crown Dependencies to publish their own action plans."[157] In addition, the United Kingdom has announced a deal with its crown dependencies and overseas territories that will mandate an exchange of information. The mandated exchange of information will be in regards to which foreign companies bank their profits in those jurisdictions.[158]

The United Kingdom released its action plan on June 18, 2013.[159] Ahead of the 2013 G8 summit, the United Kingdom had begun planning the establishment of a registry that would contain information about companies and their owners.[160] This registry of beneficial ownership would potentially be made available to the public and would "make it clear" who was ultimately benefiting from the use of corporate vehicles.[161] On July 15, 2013, the plan for the creation of a registry was published in a discussion paper called *The Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business.*[162]

The discussion paper addresses several key areas related to the abuse of corporate vehicles that were also addressed in the G8 Principles. The paper proposes that the registry should hold information about the beneficiaries of every company that is incorporated in the United Kingdom.[163] It discusses "what information should be provided to the

[155] *G8 Summit Agrees*, *supra* note 1533.

[156] Wood, *supra* note 98.

[157] *G8 2013: New Rules to Bring Unprecedented Transparency on Company Ownership*, HM TREASURY (June 15, 2013), https://www.gov.uk/government/news/g8-2013-new-rules-to-bring-unprecedented-transparency-on-company-ownership.

[158] *See G8 Summit Agrees*, *supra* note 1534.

[159] *See* PRIME MINISTER'S OFFICE, 10 DOWNING STREET, UK ACTION PLAN TO PREVENT MISUSE OF COMPANIES AND LEGAL ARRANGEMENTS (2013), *available at* https://www.gov.uk/government/publications/uk-action-plan-to-prevent-misuse-of-companies-and-legal-arrangements.

[160] *G8 2013: New Rules to Bring Unprecedented Transparency on Company Ownership*, *supra* note 1578*; see also Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business,* Department for Business Innovation and Skills (July 2013), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212079/bis-13-959-transparency-and-trust-enhancing-the-transparency-of-uk-company-ownership-and-increaing-trust-in-uk-business.pdf [hereinafter *UK Plan*].

[161] *G8 summit: George Osborne Unveils Tax Register Plan,* BBC News (June 18, 2013), http://www.bbc.co.uk/news/uk-politics-22949338 [hereinafter *George Osborne*].

[162] Sabrina Davis, *Enhancing Transparency of UK Company Ownership*, GOWLINGS (August 2013), http://www.gowlings.com/KnowledgeCentre/article.asp?pubID=2977.

[163] *See UK Plan*, *supra* note 160, at 5.

registry; how frequently it should be updated; and how to ensure that it is as accurate as possible."[164] It also demonstrates the United Kingdom's intent to give all companies the necessary statutory tools to identify their beneficial ownership; and the United Kingdom's willingness to determine "what additional requirements might be required to ensure beneficial ownership information on all companies is indeed obtained."[165] The paper also advocates the prohibition of the creation of new bearer shares, the conversion of existing bearer shares into registered shares, and more transparency related to nominee directors.[166]

It is worth noting that the paper does acknowledge the limitations to the United Kingdom's proposed registry. For example, it states that it "cannot require overseas companies operating in the UK to disclose beneficial ownership information to a UK registry." [167] The United Kingdom is aware of some of the state sovereignty issues that FATCA has encountered.[168] As a result, it calls for a more coordinated action at the E.U. and global level.[169]

2. The United States

The White House released its Action Plan on June 18, 2013.[170] The United States pledged to create legislation aimed at addressing the "'criminal' use of shell companies by forcing firms to declare their actual or beneficial ownership." [171] That pledge could be fulfilled by the Incorporation Transparency and Law Enforcement Assistance Act, which was introduced on August 1, 2013 by Senators Carl Levin, Chuck Grassley, Dianne Feinstein, and Tom Harkin.[172]

In Senator Levin's floor statement introducing the bill, he stated that:

> [the] bill would end the practice of our States forming about 2 million new corporations each year for unidentified persons, and instead require a list of the real owners to be submitted so that, if misconduct later occurred, law enforcement could access the owners list and have a trail to chase, instead of confronting what has all too often been a dead end.[173]

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[164] *See id.*
[165] *See id.*
[166] *See id.*
[167] *See UK Plan*, *supra* note 160, at 27, section 2.23.
[168] *See supra* Part I, Section C, Foreign Account Tax Compliance Act.
[169] *See UK Plan*, *supra* note 160, at 27, section 2.23.
[170] Press Release, The White House, United States G-8 Action Plan for Transparency of Company Ownership and Control (June 18, 2013), *available at* http://www.whitehouse.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control.
[171] *See George Osborne*, *supra* note 161, *at* 1.
[172] Incorporation Transparency and Law Enforcement Assistance Act, S. 1465, 113th Cong. (2013).
[173] Press Release, Senator Carl Levin, Senate Floor Statement on Introduction of the Incorporation Transparency and Law Enforcement Assistance Act (Aug. 1, 2013), *available at*

The Act seeks to achieve this goal by requiring that beneficial ownership information be collected either by the countries directly or through licensed formation agents. [174] Furthermore, it would require the information[175] on the beneficiaries of corporate vehicles formed under State law to be obtained, updated, and available upon the request of a relevant agency.[176] The Act also addresses shelf corporations and extends the beneficiary identification obligations to agents who sell them.[177]

To ease the transition to the new rules, states would be given a two-year transition period. This would give them time to set up mechanisms to begin requesting information about the beneficiaries of existing corporate vehicles.[178] The main enforcement mechanism for this Act would be the use of state compliance reports that would occur every five years.[179] The reports would identify any states that have not complied with the Act[180] and would allow Congress to determine if further action from the Federal Government is needed in order to address any lingering issues related to the abuse of corporate vehicles.[181]

The Incorporation Transparency and Law Enforcement Assistance Act, was introduced in response to United States' G8 Action Plan and embodies many of the principles from the G8 Principles.[182] It could have a profound effect on the use of shell corporations because it is "easier to obtain an anonymous shell company in the United States than almost anywhere else in the world."[183] Currently, the bill is in front of a Senate committee.[184]

IV. CONCLUSION

The G8's support of an automatic exchange of information between tax authorities and the G8 Principles' increased reporting and recording requirements relating to the identities of beneficiaries are major steps in policing tax avoidance, money laundering, and other financial crimes involving anonymous corporate vehicles. If the G8 Principles are

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http://www.levin.senate.gov/newsroom/speeches/speech/senate-floor-statement-on-introduction-of-the-incorporation-transparency-and-law-enforcement-assistance-act [hereinafter Senate Floor Statement].

[174] Press Release, Senator Carl Levin, Summary of Incorporation Transparency and Law Enforcement Assistance Act (Aug. 1, 2013), *available at* http://www.levin.senate.gov/newsroom/press/release/summary-of-incorporation-transparency-and-law-enforcement-assistance-act_-august-1-2013 [hereinafter Act Summary].

[175] Identifying information such as the names and addresses of beneficiaries would need to be obtained, as well as a U.S. driver's license or passport number, or information from a non-U.S. passport. *See id.*

[176] *See id.*

[177] *See id.*

[178] *See id.*

[179] *See id.*

[180] *See* Act Summary*, supra* note 1744.

[181] *Id.*

[182] *See* Senate Floor Statement, supra note 173.

[183] *Id* (citing results from a Griffith University study).

[184] Incorporation Transparency and Law Enforcement Assistance Act, *supra* note 172.

effective, beneficiaries will undoubtedly have a much harder time gaining and maintaining anonymity.

The next steps involve revising the OECD Model Treaty to institute automatic exchanges and increasing pressures on countries to comply with the standards set out within the G8 Principles. The automatic exchange will undoubtedly fail to prevent the abuse of corporate vehicles if countries do not record beneficiary information when corporations are established and ownership changes hands. Without more countries buying in, especially known tax havens, the international community has a long way to go before corporate vehicles are no longer used for illicit purposes. Benjamin Franklin once said that "[v]ice knows that she is ugly, so she puts on her mask."[185] It seems that the international community has finally recognized that it is time for anonymous beneficiaries to be forced to take off their masks.

[185] PUPPET MASTERS, *supra* note 7, at 33.